

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA**

UNITED STATES OF AMERICA and
STATE OF INDIANA,

Plaintiffs,

v.

ATLANTIC RICHFIELD COMPANY and
E. I. DU PONT DE NEMOURS AND COMPANY,

Defendants.

Civil Action No. 2:14-cv-312

**UNITED STATES' NOTICE OF LODGING OF
PROPOSED CONSENT DECREE
PENDING SOLICITATION OF PUBLIC COMMENTS
BY U.S. DEPARTMENT OF JUSTICE**

The United States of America (the "United States"), by and through its undersigned attorneys, hereby lodges the attached, proposed Consent Decree with this Court. **For the reasons set forth below, the Court should not sign or enter the proposed Consent Decree at this time.**

1. By even date herewith, the United States and the State of Indiana filed a Complaint in this action seeking unreimbursed response costs, injunctive relief, and a declaratory judgment pursuant to Sections 106, 107(a), and 113(g)(2) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"). 42 U.S.C. §§ 9606, 9607(a), and 9613(g)(2). The Complaint asserts that Atlantic Richfield Company ("ARC") and E. I. du Pont de Nemours and Company ("DuPont") are liable under CERCLA for lead and arsenic contamination in the

soils and subsurface soils of Zones 1 and 3 of Operable Unit 1 of the U.S. Smelter and Lead Refinery, Inc. Superfund Site (“Site”) in East Chicago, Indiana.

2. The proposed Consent Decree between the United States, Indiana, ARC, and DuPont would resolve the allegations in the Complaint and conclude the case, although the Court would retain jurisdiction to modify and/or enforce the Consent Decree.

3. The proposed Consent Decree requires ARC and DuPont, *inter alia*, to: (i) pay all of the United States’ and Indiana’s costs to clean up Zones 1 and 3 (“Z1&3”) of Operable Unit 1 of the Site; (ii) properly transport and dispose of the wastes that are generated during the clean-up of Z1&3; and (iii) pay EPA for projected response costs, plus a premium, at certain “excluded” properties within Z1&3, unless ARC and DuPont are entitled to, and do, opt out of this payment in exchange for not securing a covenant not to sue and not receiving contribution protection on these “excluded” properties.

4. At this time, the proposed Consent Decree should not be signed or entered by this Court. Instead, pursuant to Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and U.S. Department of Justice regulations codified at 28 C.F.R. § 50.7, the United States will publish notice of the lodging of the proposed Consent Decree in the Federal Register. This notice will commence a thirty day public comment period.

5. At the conclusion of the public comment period, the United States will make an appropriate filing with the Court, including providing the Court with any written comments received during the public comment period. Because the United States may withdraw its consent to the proposed Consent Decree if public comments disclose facts or considerations which indicate that the proposed Consent Decree is improper, inappropriate, inadequate, or not in the public interest, the United States will either: (i) move this Court to enter the Decree and explain

why we believe the public comments do not provide a basis for withdrawing our consent to the proposed Consent Decree; or (ii) notify the Court of our withdrawal of the proposed Consent Decree.

6. Accordingly, the Consent Decree should not be signed and entered at this time.

Respectfully Submitted,

FOR THE UNITED STATES OF AMERICA

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s/ Annette M. Lang
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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of September 2014, I caused a true copy of the foregoing United States' Notice of Lodging of Proposed Consent Decree Pending Soliciting of Public Comments by the US Department of Justice (together with the accompanying Consent Decree) to be served electronically (by means of an electronic email from me and not by means of this Court's electronic filing system) and by first class mail, postage pre-paid, on the following attorneys for Defendant:

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s/ Annette M. Lang
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